

**SUBJECT:** Allowing additional state agencies to use unmarked vehicles

**COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended

**VOTE:** 8 ayes — Wilson, Yarbrough, Flores, Goolsby, Haggerty, D. Jones, J. Moreno, Wise

0 nays

1 absent — A. Reyna

**WITNESSES:** For — None

Against — None

On — *Registered but did not testify:* Don Clemmer, Office of the Attorney General; Mike Davis, State Fire Marshal's Office/Department of Insurance; Joe Franco, Texas Lottery Commission

**BACKGROUND:** Transportation Code, sec. 721.002 requires that a state-owned vehicle bear the agency's name in letters at least two inches high. Sec. 721.003 allows use of unmarked state-owned vehicles by 14 agencies or divisions: the Texas Commission on Fire Protection, Texas State Board of Pharmacy, Texas Department of Mental Health and Mental Retardation, Department of Public Safety, Texas Department of Criminal Justice, Board of Pardons and Paroles, Parks and Wildlife Department, Railroad Commission, Texas Alcoholic Beverage Commission, Texas Department of Banking, Savings and Loan Department, Texas Juvenile Probation Commission, Texas Natural Resource Conservation Commission, and Texas Youth Commission.

**DIGEST:** CSHB 1730 would allow the governing bodies of the Texas Lottery Commission (TLC), Office of the Attorney General (OAG), and the Texas Department of Insurance (DOI) to adopt rules exempting their agencies' motor vehicles from statutory marking requirements. A rule adopted by the TLC could exempt only vehicles used exclusively for surveillance purposes.

This bill would take effect September 1, 2001.

SUPPORTERS  
SAY:

CSHB 1730 would allow investigators and other personnel with the TLC, OAG, and DOI to use unmarked vehicles as required for surveillance, undercover investigations, and security.

In the course of investigating possible violations of the State Lottery Act and the Bingo Enabling Act, the TLC's 31 law enforcement officers have worked on more than 2,500 cases involving serious felony crimes since the lottery's inception. In addition, they have handled almost 9,800 cases of lottery ticket theft (an average of more than 1,200 a year), many committed in conjunction with theft, burglary, armed robbery, and homicide. Given the level of danger involved, allowing lottery investigators to conduct surveillance operations in unmarked vehicles not only would enhance the likelihood of success but would help ensure their personal safety.

The OAG often conducts criminal investigations requiring surveillance and undercover meetings with suspects, making unmarked vehicles a necessity. Granting this exemption also would allow the agency to use forfeited vehicles that now are subject to the marking requirement as state-owned property. Many of these vehicles are ideal for undercover work because of their age and appearance. Also, the attorney general has received various types of threats against his security. Riding in marked vehicles could compromise the AG's personal safety and that of his staff.

Vehicles used by the State Fire Marshal's Office were exempt from marking requirements when the office was part of the Texas Commission on Fire Protection. The office lost the exemption when it was transferred to DOI in 1997. The state fire marshal's 44-vehicle fleet includes 42 vehicles assigned for conducting inspections and investigations, plus an arson command-communications step-van. It is crucial to case development, some of which involves criminal activity, to use unmarked vehicles to protect investigators' identities.

CSHB 1730 would create no new activities or duties requiring unmarked vehicles. The bill is intended to aid investigators, not to exempt vehicles driven by all agency personnel. Surveillance cameras are not always practical or productive for investigating the types of crimes involved.

All three agencies that this bill would exempt from the marking requirements already undertake hazardous operations in enforcing existing laws that warrant the use of unmarked vehicles to apprehend and prosecute violators, maintain the integrity of investigations, provide for officers' security, and protect public safety.

OPPONENTS  
SAY:

The State of Texas already has too many law enforcement officers traveling in unmarked vehicles. It does not need any more, especially for agencies whose primary investigative duties involve predominantly nonviolent "white-collar" crime. Marked vehicles serve to warn the public, deter violators, and impose accountability on government officials. CSHB 1730 would not provide enough safeguards to prevent large numbers of state employees with non-police enforcement power from being allowed to use unmarked vehicles to perform their official duties.

This bill would increase government-sanctioned monitoring of citizens at a time when privacy concerns are growing. Encouraging more covert operations could lead to entrapment and other forms of prosecutorial over-reaching. These types of investigations are better suited to mainstream law enforcement of large-scale, high-dollar illegal activities, such as drug trafficking, smuggling, and organized crime.

OTHER  
OPPONENTS  
SAY:

Expanding the use of unmarked vehicles could encourage less experienced investigators to take unnecessary risks, potentially jeopardizing themselves, their cases, and the public they are sworn to protect. The state should use more surveillance cameras and electronic eavesdropping devices first before putting officers in greater danger.

NOTES:

The bill as filed would have exempted only Lottery Commission surveillance vehicles.

The companion bill, SB 817 by Armbrister, passed the Senate on April 11 on the Local and Uncontested Calendar and was reported favorably, without amendment, by the House Licensing and Administrative Procedures Committee on April 18, making it eligible to be considered in lieu of HB 1730.